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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re NATHANIEL P., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHANIEL P.,

Defendant and Appellant.

G051242

(Super. Ct. No. DL049519)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lewis W. Clapp, Judge. Affirmed as modified.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Christen Somerville, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Nathaniel P. was placed on juvenile probation for pushing a safety officer at his school. (Pen. Code, § 148, subd. (a)(1).) As a condition of his probation, appellant may not “use or possess any dangerous, illegal or deadly weapons or knowingly be in the presence of any illegally armed person,” nor may he “initiate contact or cause to be contacted by any means with victims or witnesses of any offense alleged against” him. Appellant contends these conditions are unduly vague, and we agree.

As our Supreme Court has stated, “A probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.]” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) However, except for the prohibition against being in the presence of an illegally armed person, the probation conditions appellant challenges do not contain any scienter requirement. Consequently, appellant could be hauled into court on suspicion of violating his probation even if he unwittingly possessed a weapon or initiated contact with a person who he did not know was a witness against him. Although the state urges us to simply imply a knowledge requirement into the conditions, as some courts have done (see, e.g., *People v. Hall* (2015) 236 Cal.App.4th 1124, 1135-1137; *People v. Patel* (2011) 196 Cal.App.4th 956, 960-961), “the law has no legitimate interest in punishing an innocent citizen who has no knowledge of” the particular person, place or object he is required to avoid. (*People v. Freitas* (2009) 179 Cal.App.4th 747, 752 [modifying probation condition to prohibit *knowing* possession of a firearm or ammunition].)

Therefore, we will adhere to our standard practice of modifying the subject conditions to include an express knowledge requirement. (*People v. Moses* (2011) 199 Cal.App.4th 374, 381, following *In re Sheena K.*, *supra*, 40 Cal.4th at pp. 891-893, accord, *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1351; *In re Victor L.* (2010) 182 Cal.App.4th 902, 912-913; *People v. Freitas*, *supra*, 179 Cal.App.4th at p. 752; *In re*

Justin S. (2001) 93 Cal.App.4th 811, 816.) That is the best way to prevent arbitrary law enforcement and ensure appellant knows what conduct is expected of him.

DISPOSITION

The terms of appellant's condition are modified to state that he may not "knowingly use or possess any dangerous, illegal or deadly weapons or knowingly be in the presence of any illegally armed person," and that he may not "knowingly initiate contact with or cause to be contacted by any person he knows is a victim or a witness of any offense alleged against him." As so modified, the judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.